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KARI MORELL

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March 3, 2011

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

FILED

MAR 3 - 2011

**SURFACE
TRANSPORTATION BOARD**

MAR 3 2011

RECEIVED

Re: STB Docket No. AB-1011 (Sub-No. 1X), Northern Lines Railway,
LLC – Discontinuance of Service Exemption – In Stearns County,
Minnesota

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for Exemption under 49 C.F.R. 1152.60. Also attached is a check covering the \$6,300 filing fee.

Please time and date stamp the extra copy of the Petition for Exemption and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

Karl Morell

ENCLOSURE
Office of Proceedings
11
MAR 3 2011
SURFACE
TRANSPORTATION BOARD

Enclosures

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MAR 3 2011
**SURFACE
TRANSPORTATION BOARD**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1011 (Sub-No. 1X)

NORTHERN LINES RAILWAY, LLC
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN STEARNS COUNTY, MN

PETITION FOR EXEMPTION

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TRANSPORTATION BOARD

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Of Counsel
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Washington, D.C. 20005
(202) 638-3307

Attorneys for:
NORTHERN LINES RAILWAY, LLC

Dated: March 3, 2011

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1011 (Sub-No. 1X)

NORTHERN LINES RAILWAY, LLC
-- DISCONTINUANCE OF SERVICE EXEMPTION --
IN STEARNS COUNTY, MN

PETITION FOR EXEMPTION

Northern Lines Railway ("NLR") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, NLR's discontinuance of service over approximately 7.05 miles of rail line owned by BNSF Railway Company ("BNSF") in Stearns County, MN.

PROPOSED TRANSACTION

NLR proposes to discontinue its lease operations over the rail line located between Milepost 9.16, at Rockville, and Milepost 16.21, at Cold Spring, in Stearns County, Minnesota (the "Line"). The Line traverses U.S. Postal Service Zip Codes 56369 and 56320. A map of the Line is attached as Exhibit A.

BNSF has represented to NLR that the Line does not contain any federally granted right-of-way. Any documentation in NLR's possession regarding the Line will be made available to those requesting it. Cold Spring is the only station on the rail line over which service is being discontinued by NLR.

STATEMENT OF FACTS

The Board authorized NLR's lease of the Line, as well as other rail lines, in STB Finance Docket No. 34627, *Northern Lines Railway, LLC – Lease and Operation Exemption – The Burlington Northern and Santa Fe Railway Company* (not printed), served January 6, 2005. There are no active rail customers on the Line. The last active rail customer on the Line, Wenner Gas Company, Inc. ("Wenner"), has relocated its facility to a new industrial park located in Rockville, MN. The cities of Rockville, Cold Spring and Richmond have formed a trail association, ROCORI Trail, and wish to railbank the Line. On January 31, 2011, BNSF filed for authority to abandon the Line. See STB Docket No. AB-6 (Sub-No. 472X), *BNSF Railway Company -- Abandonment Exemption -- Stearns County, MN*, filed Jan. 31, 2011.

EXEMPTION REQUESTED

A rail carrier may not discontinue service over non-excepted rail lines without the prior approval of the Board. 49 U.S.C. § 10903(d); see also *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope; or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §§ 10101(2) and (7). *See, e.g., Norfolk & W. Ry. Co. – Aband. Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X),

Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA (not printed), served September 17, 1997 (“*Georgia Central*”). It also would result in the efficient handling of this proceeding. 49 U.S.C. § 10101(15). By discontinuing operations over the Line, NLR will be able to terminate its common carrier obligation to provide service over the Line which no longer has any active rail customers. NLR will also no longer be required to maintain the dormant Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5) and (9). *See, e.g.*, STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997; STB Docket No. AB-364 (Sub-No. 15X), *Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Kent and Ottawa Counties, MI* (not printed), served June 1, 2009.

Other aspects of the rail transportation policy will not be affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since there are no active rail customers on the Line and no need for rail service along the Line.

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992; Docket No. AB-6 (Sub-No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993.

The proposed transaction is clearly of limited scope. NLR is seeking to discontinue its lease operations over 7.05 miles of rail line that no longer has any active rail customers. The shortness of the Line, the limited geographic area involved, and the lack of use all demonstrate the limited scope of the proposed discontinuance. *See, e.g.,* Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

C. This Transaction Will Not Result In An Abuse of Market Power

The last active rail customer on the Line, Wenner, has relocated its facility to a new industrial park in Rockville, MN. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

Because this is a discontinuance proceeding and not an abandonment, this proceeding is exempt from environmental reporting requirements. *See* STB Docket No. AB-331 (Sub-No. 1X), *Bi-State Development Agency of the Missouri-Illinois Metropolitan District – Discontinuance of Service Exemption – In the City of St. Louis, MO* (not printed), served February 19, 2010; STB AB-591X, *Laurinburg & Southern Railroad Co., Inc. – Discontinuance of Service Exemption -- in Hoke and Scotland Counties, NC*, served Nov. 26, 2007. Moreover,

the Environmental Report and Historic Report covering the Line was prepared by BNSF and filed with the Board on January 7, 2011 in STB Docket No. AB-6 (Sub-No. 472).

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, the proposed discontinuance is of limited scope. Accordingly, NLR respectfully urges the Board to grant the discontinuance.

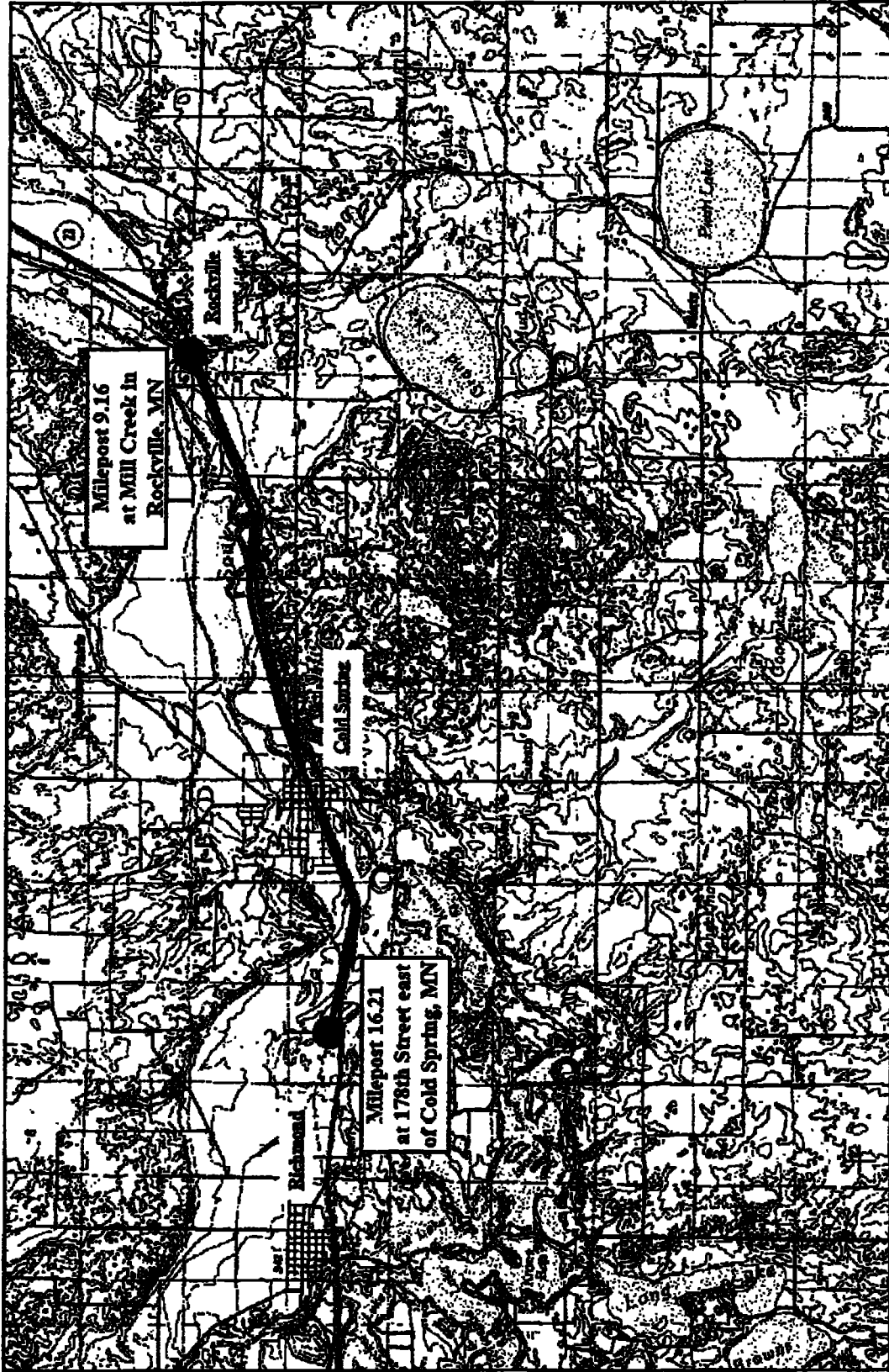
Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morell", written over a horizontal line.

Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
NORTHERN LINES RAILWAY, LLC

Dated: March 3, 2011



Base Map - United States Geological Survey
 Litchfield, Minnesota
 30 x 60 minute series
 45094-A1-TM-100
 1986

Milepost 9.16 to Milepost 16.21
 Cold Spring Branch
 Stearns County

Rockville to Cold Spring,
 Minnesota

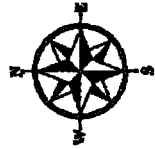


EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1011 (Sub-No. 1X)

**NORTHERN LINES RAILWAY, LLC
--DISCONTINUANCE OF SERVICE EXEMPTION--
IN STEARNS COUNTY, MN**

On March 3, 2011, Northern Lines Railway, LLC (NLR) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for NLR to discontinue service over a 7.05-mile line of railroad owned by BNSF Railway Company and extending from milepost 9.16, at Rockville, to milepost 16.21, at Cold Spring, in Stearns County, Minnesota. The line traverses U.S. Postal Service Zip Codes 56369 and 56320. Cold Spring is the only station on the Line.

NLR has been advised by the owner of the line that the line does not contain federally granted rights-of-way. Any documentation in NLR's possession regarding the line will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June __, 2011.

This proceeding is exempt from environmental reporting requirements.

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for

exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB-1011 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0230 or refer to the full discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: _____ 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of March, 2011, I had the foregoing Petition for Exemption served by first class mail, postage pre-paid on the following parties:

State Public Service Commission Minnesota Public Utilities Commission 121 7 th Place E., Suite 350 Saint Paul, MN 55101-2147 Military Traffic Management Command MTMCTEA ATTN: SDTE-SA Railroads for National Defense 709 Ward Drive, Building 1990 Scott AFB, IL 62225-5357	National Park Service Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001 National Park Service National Park Service 601 Riverfront Drive Omaha, NE 68102-4226 U.S. Department of Agriculture U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Yates Building 201 14 th Street, S.W. Washington, DC 20250
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Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in STB Docket No. AB-1011 (Sub-No. 1X) was published on March 2, 2011, in the Melrose Beacon, a newspaper of general circulation in Stearns County, Minnesota as required by 49 C.F.R. § 1105.12.

Dated: March 3, 2011


Karl Morell